

**Final Order Denying Refund: 14-20210032R
Special Fuel Tax
For the Tax Year 2017**

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

HOLDING

Company failed to prove that it is being taxed on volumes of product that are not being consumed by its end-users, on a product that prior to compression does not qualify as compressed natural gas.

ISSUE

I. Special Fuel Tax - Natural Gas Consumed or Lost in Production.

Authority: IC § 6-6-2.5-28; IC § 6-6-2.5-30; IC § 6-8.1-5-4; IC § 6-6-2.5-16.5; IC § 6-6-2.5- 22; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014).

Taxpayer argues that it is being taxed on volumes of product that are not being consumed by its end-users.

STATEMENT OF FACTS

Taxpayer operates compressed natural gas ("CNG") fueling stations located throughout the United States, including Indiana. Taxpayer claimed a refund for Indiana special fuel tax, surcharge taxes, and special fuel inspection fees charged and paid taxes. The Indiana Department of Revenue ("Department") denied the refund. Taxpayer protests the denial. An administrative hearing was conducted and this Final Order Denying Refund results.

I. Special Fuel Tax - Natural Gas Consumed or Lost in Production.

DISCUSSION

Taxpayer claimed a refund of Indiana special fuel tax, surcharge taxes, and special fuel inspection fees paid in 2017. The Department denied Taxpayer's claim for refund stating:

Fuel losses during compression of natural gas (CNG) is not exempt and is not refundable. The nonhighway purpose exemption does not apply, because that exemption only applies to dyed fuel. After reviewing the specific enumerated exemption in [IC 6-6-2.5-30](#), the CNG would not be exempt under the relevant statute; cannot claim refund for difference between billed gallons of CNG and gallons of CNG sold via metered pump.

Taxpayer argues that the taxes, surcharge taxes, and inspection fees were charged to Taxpayer for fuel that it did not sell to its end-use customers and the end-use consumers to did not produce or generate power for propelling motor vehicles.

Specifically, Taxpayer claims that it did not actually receive all the product set forth in its nomination. A nomination is a request for a physical quantity of gas under a specific purchase, sales, or transportation agreement or for all contracts at a specific point. Taxpayer paid taxes on the full amount of the nomination. Additionally, Taxpayer claims there is a discrepancy between the volume of product measured at the supply end versus the volume of product dispensed by Taxpayer to its end-users. Thus, Taxpayer is being taxed on volumes of product that are not being consumed by its end-users, on a product that, prior to compression, does not qualify as CNG.

"[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . .[courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision shall be entitled to deference.

IC § 6-6-2.5-28(a) imposes a "license tax" on the sales of "special fuel" as follows:

(a) A license tax of sixteen cents (\$0.16) per:

- (1) gallon;
- (2) diesel gallon equivalent (as defined in [IC 6-6-4.1-1\(f\)](#)), in the case of a special fuel that is liquid natural gas; or
- (3) gasoline gallon equivalent (as defined in [IC 6-6-4.1-1\(g\)](#)), in the case of a special fuel that is compressed natural gas;

is imposed on all special fuel sold or used in producing or generating power for propelling motor vehicles except fuel used under section 30(a)(8) or 30.5 of this chapter. The tax shall be paid at those times, in the manner, and by those persons specified in this section and section 35 of this chapter.

. . . "special fuel" means all combustible gases and liquids that are:

- (1) suitable for the generation of power in an internal combustion engine or motor; or
- (2) used exclusively for heating, industrial, or farm purposes other than for the operation of a motor vehicle.

IC § 6-6-2.5-22 states:

Special fuel includes biodiesel and blended biodiesel (as defined in [IC 6-6-2.5-1.5](#)) and natural gas products. However, the term does not include an alternative fuel, gasoline (as defined in [IC 6-6-1.1-103](#)), ethanol produced, stored, or sold for the manufacture of or compounding or blending with gasoline, kerosene, and jet fuel (if the purchaser of the jet fuel has provided to the seller proof of the purchaser's federal jet fuel registration at or before the time of sale).

As used in this chapter, "natural gas product" means:

- (1) a liquid or compressed natural gas product; or
 - (2) a combination of liquefied petroleum gas and a compressed natural gas product;
- used in an internal combustion engine or motor to propel any form of vehicle, machine, or mechanical contrivance. [IC 6-6-2.5-16.5](#)

Every person subject to a listed tax must keep books and records so that the Department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts and canceled checks. IC § 6-8.1-5-4(a).

Taxpayer's argument is equitable in nature; its argument is not supported by statute, even though it did provide some documentation and records. Those records do not establish the discrepancy between the volume of product measured at the supply end versus the volume of product dispensed by Taxpayer to its end-users. Taxpayer does not provide contemporaneous measurements of quantities of the natural gas at the various stages in the compression process, transportation process, and vending process. Taxpayer thereby fails to provide the Department with the documents necessary to determine whether Taxpayer is being taxed on volumes of product that are not being consumed by its end-users, on a product that, prior to compression, does not qualify as CNG, as described in IC § 6-8.1-5-4(a).

FINDING

Taxpayer's protest is respectfully denied.

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